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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,758	08/20/2002	Malte Neuss	THIE.0009	4917

7590 09/21/2005

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EXAMINER
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STEWART, ALVIN J

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/806,758

Applicant(s)

NEUSS ET AL.

Examiner

Alvin J. Stewart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-28 and 34-45 is/are rejected.
- 7) ☒ Claim(s) 29-33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                       |                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____                                                |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 25, 27, 28, and 34-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Gaschino et al US Patent 6,325,821 B1.

Gaschino discloses a stent comprising a plurality of coupled flexible zigzag annular elements (2) connected to each other by a plurality of bending elements having a bow shaped connector bars (3). Regarding the star shaped segment, the above reference is capable of disclosing a star shaped segment when the stent is in the compressed and expanded positions (see attachment).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaschino et al US Patent 6,325,821 B1 in view of Cox US Patent 6,461,380 B1.

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Gaschino et al discloses the invention substantially as claimed. However, Gaschino does not disclose connector bars having a width from 10 to 50% smaller than the width of the straight connector bars.

Cox teaches connector bars having a width from 10 to 50% smaller than the width of the straight connector bars for the purpose of increasing the flexibility at the connecting bars.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Gaschino et al reference with the connecting bars of the Cox reference in order to increase the flexibility at the connecting bars.

Claims 38-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaschino et al US Patent 6,325,821 B1 in view of Wright et al US Patent 6,273,913 B1.

Gaschino et al discloses the invention substantially as claimed. However, Gaschino et al does not disclose resorbable material, polyester, drugs, and radioactive materials.

Wright et al teaches a stent having a plurality of coatings (e.g. coatings having resorbable materials (see col. 7, lines 2-8), polyester (see col. 6, lines 28-31), drugs (see col. 6, lines 25-28), and radioactive materials (see col. 5, line 19)) for the purpose of preventing inflammation and the proliferation of smooth muscle cells by providing a controlled diffusion of drugs from the stent to the artery wall (see col. 3, lines 48-52 and col. 5, lines 53-57).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Gaschino et al stent with the plurality of coatings of the Wright et al reference in order to prevent the inflammation and the proliferation of smooth muscle cells by providing a controlled diffusion of drugs from the stent to the artery wall.

*Allowable Subject Matter*

Claims 29-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

Applicant's arguments filed July 01, 2005 have been fully considered but they are not persuasive.

The Applicant's representative discloses that the '821 reference does not disclose star-shaped bending elements in a non-expanded state. The Examiner disagrees with the Applicant's point of view, Fig. 2 of the '821 reference discloses a flexible zigzag annular element (2) connected to another flexible zigzag annular element (2) by bending elements (bars adjacent to V-shaped elements (3)) formed from a bow shaped connector bar (3) in a non-expanded state. Therefore, the Examiner still believes that the new limitations, entered in the independent claim, read in the prior art. Therefore, the rejection is maintained.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J Stewart whose telephone number is 703-305-0277. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**ALVIN J. STEWART**  
**PRIMARY EXAMINER**

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September 15, 2005.